

HOUSE BILL No. 1816

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-2-9; IC 31-9-2; IC 31-14-16-1; IC 31-15; IC 34-6-2; IC 34-26; IC 35-33-1-1; IC 35-38-1-7.1; IC 35-41-1.

Synopsis: Protective orders. Requires the clerk of a court that issues a workplace violence restraining order to provide a copy of the order and the confidential sheet to the employer. Requires the division of state court administration to develop and adopt forms for no contact orders and workplace violence restraining orders. Amends the definitions of: (1) domestic or family violence; (2) family or household member; (3) employee; and (4) employer. Requires certain language to appear on a protective order, no contact order, and workplace violence restraining order. Provides that a parent in a paternity or divorce proceeding may request a protective order against the other parent from the court in which the paternity or divorce matter is pending. Provides that a court may issue certain types of relief in a protective order before a hearing. Provides that a court may consider violation of a no contact order or a workplace violence restraining order in determining the sentence to impose for a crime.

Effective: July 1, 2003.

Lawson L, Scholer, Mays

January 23, 2003, read first time and referred to Committee on Judiciary.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1816

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-2-9-1.4 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]: **Sec. 1.4. As used in this chapter, "employer" has the**
4 **meaning set forth in IC 34-26-6-4.**

5 SECTION 2. IC 5-2-9-1.7 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2003]: **Sec. 1.7. As used in this chapter, "protected person"**
8 **means a person who is protected under a protective order, a no**
9 **contact order, or a workplace violence restraining order.**

10 SECTION 3. IC 5-2-9-6, AS AMENDED BY P.L.133-2002,
11 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2003]: **Sec. 6. (a) The clerk of a court that issues a protective**
13 **order, a no contact order, or a workplace violence restraining order**
14 **shall provide a copy of the order to each of the following:**

- 15 (1) Each party.
16 (2) A law enforcement agency of the municipality in which the
17 **protected person protected by the protective order, no contact**



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order, or workplace violence restraining order resides.

(3) **In the case of a workplace violence restraining order, the law enforcement agency of the municipality in which the workplace of the employer is located.**

(4) If the ~~protected person protected by the protective order, no contact order, or workplace violence restraining order does is not~~ **reside domiciled** in a municipality, the sheriff of the county in which the protected person resides.

(5) **In the case of a workplace violence restraining order, if the workplace of the employer is not located in a municipality, the sheriff of the county in which the workplace of the employer is located.**

(b) The clerk of a court that issues a protective order, a no contact order, or a workplace violence restraining order or the clerk of a court in which a petition is filed shall:

(1) maintain a confidential file to secure any confidential information about a protected person designated on a uniform statewide form prescribed by the division of state court administration; ~~and~~

(2) provide a copy of the confidential form that accompanies the protective order, no contact order, or workplace violence restraining order to the following:

(A) The sheriff of the county in which the protective order, no contact order, or workplace violence restraining order was issued.

(B) The law enforcement agency of:

(i) the municipality, if any, in which the protected person ~~resides: is domiciled; and~~

(ii) **in the case of a workplace violence restraining order, the municipality, if any, in which the employer's workplace is located.**

(C) Any other sheriff or law enforcement agency designated in the protective order, no contact order, or workplace violence restraining order that has jurisdiction over the area in which a protected person **or, in the case of a workplace violence restraining order, an employer,** may be located or protected; **and**

(3) after receiving the return of service information, transmit all return of service information to each sheriff and law enforcement agency referred to in subdivision (2).

(c) A sheriff or law enforcement agency that receives a protective order, no contact order, or workplace violence restraining order under

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subsection (a) and a confidential form under subsection (b) shall:

(1) maintain a copy of the protective order, no contact order, or workplace violence restraining order in the depository established under this chapter;

(2) enter:

(A) the date and time the sheriff or law enforcement agency receives the protective order, no contact order, or workplace violence restraining order;

(B) the location of the person who is subject to the protective order, no contact order, or workplace violence restraining order, if reasonably ascertainable from the information received;

(C) the name and identification number of the officer who serves the protective order, no contact order, or workplace violence restraining order;

(D) the manner in which the protective order, no contact order, or workplace violence restraining order is served;

(E) the name of the petitioner and any other protected parties;

(F) the name, Social Security number, date of birth, and physical description of the person who is the subject of the protective order, no contact order, or workplace violence restraining order, if reasonably ascertainable from the information received;

(G) the date the protective order, no contact order, or workplace violence restraining order expires;

(H) a caution indicator stating whether a person who is the subject of the protective order, no contact order, or workplace violence restraining order is believed to be armed and dangerous, if reasonably ascertainable from the information received; and

(I) if furnished, a Brady record indicator stating whether a person who is the subject of the protective order, no contact order, or workplace violence restraining order is prohibited from purchasing or possessing a firearm or ammunition under federal law, if reasonably ascertainable from the information received;

on the copy of the protective order, no contact order, or workplace violence restraining order or the confidential form; and

(3) establish a confidential file in which a confidential form that contains information concerning a protected person is kept.

(d) A protective order, no contact order, or workplace violence restraining order may be removed from the depository established

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under this chapter only if the sheriff or law enforcement agency that administers the depository receives:

- (1) a notice of termination on a form prescribed or approved by the division of state court administration;
- (2) an order of the court; or
- (3) a notice of termination and an order of the court.

(e) If a protective order, no contact order, or workplace violence restraining order in a depository established under this chapter is terminated, the person who obtained the order must file a notice of termination on a form prescribed or approved by the division of state court administration with the clerk of the court. The clerk of the court shall provide a copy of the notice of termination of a protective order, no contact order, or workplace violence restraining order to each of the depositories to which the protective order, no contact order, or workplace violence restraining order and a confidential form were sent. The clerk of the court shall maintain the notice of termination in the court's file.

(f) If a protective order, no contact order, or workplace violence restraining order or form in a depository established under this chapter is extended or modified, the person who obtained the extension or modification must file a notice of extension or modification on a form prescribed or approved by the division of state court administration with the clerk of the court. The clerk of the court shall provide a copy of the notice of extension or modification of a protective order, no contact order, or workplace violence restraining order to each of the depositories to which the order and a confidential form were sent. The clerk of the court shall maintain the notice of extension or modification of a protective order, no contact order, or workplace violence restraining order in the court's file.

(g) The clerk of a court that issued an order terminating a protective order, no contact order, or workplace violence restraining order that is an ex parte order shall provide a copy of the order to the following:

- (1) Each party.
- (2) The law enforcement agency provided with a copy of a protective order, no contact order, or workplace violence restraining order under subsection (a).

SECTION 4. IC 31-9-2-42, AS AMENDED BY P.L.133-2002, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 42. "Domestic or family violence" means, except for an act of self defense, the occurrence of one (1) or more of the following acts committed by a family or household member:

- (1) Attempting to cause, threatening to cause, or causing physical

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harm to another family or household member without legal justification.

(2) Placing a family or household member in fear of physical harm without legal justification.

(3) Causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress.

For purposes of IC 34-26-5, domestic ~~and~~ or family violence also includes stalking (as defined in IC 35-45-10-1) or a sex offense under IC 35-42-4, **whether or not the stalking or sex offense is committed by a family or household member.**

SECTION 5. IC 31-9-2-44.5, AS ADDED BY P.L.133-2002, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 44.5. **(a) An individual is a "family or household member" means: of another person if the individual:**

(1) ~~a person who~~ is a current or former spouse **of the other person;**

(2) ~~a person who~~ is dating or has dated **the other person;**

(3) ~~a person who~~ is ~~engaged~~ or was engaged in a sexual relationship **with the other person;**

(4) **cohabits or previously cohabited with the other person;**

(5) ~~a person who~~ is related by blood or adoption **to the other person;**

~~(5) (6) a person who~~ is ~~related~~ or was related by marriage **to the other person;**

~~(6) (7) a person who~~ has an ~~established legal relationship~~ or previously **had an** established a legal relationship:

(A) as a guardian **of the other person;**

(B) as a ward **of the other person;**

(C) as a custodian **of the other person;**

(D) as a foster parent **of the other person;** or

(E) in a capacity similar to those listed in clauses (A) through

(D) **with the other person; or**

~~(7) (8) a person who~~ has a child in common **and with the other person.**

~~(8) (b)~~ **An individual is a "family or household member" of both persons to whom subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) applies if the individual is a minor child of a person in a relationship described in subdivisions (1) through (7): one (1) of the persons to whom subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) applies.**

SECTION 6. IC 31-14-16-1, AS AMENDED BY P.L.133-2002, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2003]: Sec. 1. A parent may request a court to issue a protective order against the other parent to prevent domestic or family violence at any time after a final decree of paternity is issued under this article (or IC 31-6-6.1 before its repeal) if the parties have an unemancipated child. The parent must file a petition under IC 34-26-5 in a ~~pending case~~, **the court in which the case is pending**, and the court may not require the moving party to give security. If the petitioner requests an ex parte protective order, the court shall immediately:

- (1) review the request; and
- (2) if required, set a hearing;

under IC 34-26-5. The procedure and law for a proceeding under this section are controlled by IC 34-26-5.

SECTION 7. IC 31-15-4-1, AS AMENDED BY P.L.133-2002, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) In an action for dissolution of marriage under IC 31-15-2 or legal separation under IC 31-15-3, either party may file a motion for any of the following:

- (1) Temporary maintenance.
- (2) Temporary support or custody of a child of the marriage entitled to support.
- (3) Possession of property.
- (4) Counseling.
- (5) A protective order under IC 34-26-5.

(b) If a party desires a protective order under subsection (a)(5), the party must file a petition under IC 34-26-5 in a ~~pending case~~, **the court in which the case is pending**, and the court may not require the moving party to give security. If the petitioner requests an ex parte protective order, the court shall immediately:

- (1) review the request; and
- (2) if required, set a hearing;

under IC 34-26-5. The procedure and law for a proceeding under this subsection are controlled by IC 34-26-5.

SECTION 8. IC 31-15-5-1, AS AMENDED BY P.L.133-2002, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. Either party may request a protective order to prevent domestic or family violence at any time during the dissolution of marriage or legal separation action by filing a petition under IC 34-26-5 ~~with in~~ the court in **which the case is pending**. ~~case.~~ The court may not require the moving party to give security. If the petitioner requests an ex parte protective order, the court shall immediately:

- (1) review the request; and
- (2) if required, set a hearing;



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under IC 34-26-5. The procedure and law for a proceeding under this section are controlled by IC 34-26-5.

SECTION 9. IC 34-6-2-34.5, AS ADDED BY P.L.133-2002, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 34.5. "Domestic or family violence" means, except for an act of self-defense, the occurrence of at least one (1) of the following acts committed by a family or household member:

- (1) Attempting to cause, threatening to cause, or causing physical harm to another family or household member.
- (2) Placing a family or household member in fear of physical harm.
- (3) Causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress.

For purposes of IC 34-26-5, domestic ~~and~~ **or** family violence also includes stalking (as defined in IC 35-45-10-1) or a sex offense under IC 35-42-4, **whether or not the stalking or sex offense is committed by a family or household member.**

SECTION 10. IC 34-6-2-44.8, AS ADDED BY P.L.133-2002, SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 44.8. **(a) An individual is a "family or household member" means: of another person if the individual:**

- (1) ~~a person who~~ is a current or former spouse **of the other person;**
- (2) ~~a person who~~ is dating or has dated **the other person;**
- (3) ~~a person who~~ is ~~engaged~~ or was engaged in a sexual relationship **with the other person;**
- (4) **cohabits or previously cohabited with the other person;**
- (5) ~~a person who~~ is related by blood or adoption **to the other person;**
- ~~(5) (6) a person who~~ is related or was related by marriage **to the other person;**
- ~~(6) (7) a person who~~ has ~~an established legal relationship~~ or previously **had an established a legal relationship:**
 - (A) as a guardian **of the other person;**
 - (B) as a ward **of the other person;**
 - (C) as a custodian **of the other person;**
 - (D) as a foster parent **of the other person;** or
 - (E) in a capacity similar to those listed in clauses (A) through (D) **with the other person; or**
- ~~(7) a person who~~ **(8) has a child in common and with the other person.**

~~(8) (b) An individual is a "family or household member" of both~~



persons to whom subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) applies if the individual is a minor child of a person in a relationship described in subdivisions (1) through (7): one (1) of the persons to whom subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) applies.

SECTION 11. IC 34-26-5-3, AS ADDED BY P.L.133-2002, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) The division of state court administration shall:

(1) develop and adopt:

(A) a petition for an order for protection;

(B) an order for protection, including:

(i) orders issued under this chapter;

(ii) ex parte orders; and

(iii) no contact orders under IC 31 and IC 35; and

(iv) forms relating to workplace violence restraining orders under IC 34-26-6;

(C) a confidential sheet; form;

(D) a notice of modification or extension for an order for protection, **a no contact order, or a workplace violence restraining order;**

(E) a notice of termination for an order for protection, **a no contact order, or a workplace violence restraining order;** and

(F) any other uniform statewide forms necessary to maintain an accurate registry of orders; and

(2) provide the forms under subdivision (1) to the clerk of each court authorized to issue the orders.

(b) In addition to any other required information, a petition for an order for protection must contain a statement listing each civil or criminal action involving:

(1) either party; or

(2) a child of either party.

(c) The following statements must be printed in boldface type or in capital letters on an order for protection, **a no contact order, or a workplace violence restraining order:**

VIOLETION OF THIS ORDER IS PUNISHABLE BY CONFINEMENT IN JAIL, PRISON, AND/OR A FINE.

IF SO ORDERED BY THE COURT, THE RESPONDENT IS FORBIDDEN TO ENTER OR STAY AT THE PETITIONER'S RESIDENCE, EVEN IF INVITED TO DO SO BY THE PETITIONER OR ANY OTHER PERSON. IN NO EVENT IS

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THE ORDER FOR PROTECTION VOIDED.

PURSUANT TO 18 U.S.C. 2265, THIS ORDER FOR PROTECTION SHALL BE GIVEN FULL FAITH AND CREDIT IN ANY OTHER STATE OR TRIBAL LAND AND SHALL BE ENFORCED AS IF IT WERE AN ORDER ISSUED IN THAT STATE OR TRIBAL LAND. PURSUANT TO 18 U.S.C. 922(g), **ONCE A RESPONDENT HAS RECEIVED NOTICE OF THIS ORDER AND HAS HAD AN OPPORTUNITY TO BE HEARD**, IT IS A FEDERAL VIOLATION TO PURCHASE, RECEIVE, OR POSSESS A FIREARM WHILE SUBJECT TO THIS ORDER IF:

(A) THE PROTECTED PERSON IS THE RESPONDENT'S CURRENT OR FORMER SPOUSE;

(B) THE RESPONDENT CURRENTLY RESIDES OR FORMERLY RESIDED WITH THE PROTECTED PERSON WHILE IN AN INTIMATE RELATIONSHIP; OR

(C) THE RESPONDENT HAS HAD A CHILD WITH THE PROTECTED PERSON.

INTERSTATE VIOLATION OF THIS ORDER MAY SUBJECT THE RESPONDENT TO FEDERAL CRIMINAL PENALTIES UNDER 18 U.S.C. 2261 AND 18 U.S.C. 2262.

(d) The clerk of the circuit court, or a person or entity designated by the clerk of the circuit court, shall provide to a person requesting an order for protection:

- (1) the forms adopted under subsection (a);
- (2) all other forms required to petition for an order for protection, including forms:
 - (A) necessary for service; and
 - (B) required under IC 31-17-3; and
- (3) clerical assistance in reading or completing the forms and filing the petition.

Clerical assistance provided by the clerk or court personnel under this section does not constitute the practice of law. The clerk of the circuit court may enter into a contract with a person or another entity to provide this assistance.

(e) A petition for an order for protection must be:

- (1) verified or under oath under Trial Rule 11; and
- (2) issued on the forms adopted under subsection (a).

(f) If an order for protection is issued under this chapter, the clerk shall comply with IC 5-2-9.

SECTION 12. IC 34-26-5-6, AS ADDED BY P.L.133-2002,



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SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. The following rules apply to an order for protection issued under this chapter:

- (1) An order for protection is in addition to, and not instead of, another available civil or criminal proceeding.
- (2) A petitioner is not barred from seeking an order because of another pending proceeding.
- (3) A court may not delay granting relief because of the existence of a pending action between the petitioner and respondent.
- (4) If a person who petitions for an ex parte order for protection also has a pending case involving:
 - (A) the respondent; or
 - (B) a child of the petitioner and respondent;
 the court that has been petitioned for relief shall immediately consider the ex parte petition and then transfer that matter to the court in which the other case is pending.

(5) If a person files a petition for an order of protection requesting relief that:

- (A) may be provided without a hearing under sections 9(b) and 10(a) of this chapter; but**
 - (B) requires a hearing under sections 9(c) and 10(b) of this chapter;**
- the court may issue an ex parte order for protection providing the requested relief at any time before the required hearing referred to in clause (B).**

SECTION 13. IC 34-26-5-7, AS ADDED BY P.L.133-2002, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. A petitioner may omit the petitioner's address from all nonconfidential documents filed with a court. However, a petitioner must provide the court with complete information concerning the protected address on the uniform statewide confidential ~~sheet~~ **form** and on other confidential forms developed by the division of state court administration under section 3 of this chapter. A petitioner shall also provide the clerk with a public mailing address for purposes of serving pleadings, notices, and court orders. The petitioner may use the address confidentiality program under IC 5-26.5. If disclosure of a petitioner's address is necessary to determine jurisdiction or to consider venue, the court may order the disclosure to be made:

- (1) after receiving a petitioner's consent;
- (2) orally in the judge's chambers and out of the presence of a respondent with a sealed record made; or
- (3) after a hearing in which the court considers the safety of a



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petitioner and finds that disclosure of the address is in the interest of justice.

SECTION 14. IC 34-26-6-3, AS ADDED BY P.L.133-2002, SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. As used in this chapter, "employee" means:

~~(+) an employee (as defined in IC 22-2-2-3);~~ **(1) a person employed or permitted to work or perform a service for remuneration;**

(2) a member of a board of directors for a private, public, or quasi-public corporation;

(3) an elected or appointed public officer; and

(4) a volunteer or an independent contractor who performs services for an employer at the employer's place of work.

SECTION 15. IC 34-26-6-4, AS ADDED BY P.L.133-2002, SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. As used in this chapter, "employer" means:

(1) a person ~~(as defined as an employer under IC 22-2-2-3; in IC 33-2.1-8-1)~~ **that has two (2) or more employees during any work week;**

(2) a federal agency;

(3) the state;

~~(4) a state agency;~~

~~(5) a city;~~

~~(6) a county;~~

~~(7)~~ **(4)** a private, public, or quasi-public corporation or a public agency; and

~~(8)~~ **(5)** a public agency operating wholly within or as part of a public or quasi-public corporation.

SECTION 16. IC 34-26-6-14, AS ADDED BY P.L.133-2002, SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. A filing fee may not be charged for a petition that alleges that a person has:

(1) inflicted or threatened violence against an employee of the ~~petitioner;~~ **plaintiff;**

(2) stalked an employee of the ~~petitioner;~~ **plaintiff;** or

(3) spoken in a manner that has placed an employee in reasonable fear of violence;

and that seeks a temporary restraining order or an injunction to restrain future violence or threats of violence. A filing fee may not be charged for a responsive pleading described under section 8 of this chapter.

SECTION 17. IC 35-33-1-1, AS AMENDED BY P.L.133-2002, SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2003]: Sec. 1. (a) A law enforcement officer may arrest a person when the officer has:

- (1) a warrant commanding that the person be arrested;
- (2) probable cause to believe the person has committed or attempted to commit, or is committing or attempting to commit, a felony;
- (3) probable cause to believe the person has violated the provisions of IC 9-26-1-1(1), IC 9-26-1-1(2), IC 9-26-1-2(1), IC 9-26-1-2(2), IC 9-26-1-3, IC 9-26-1-4, or IC 9-30-5;
- (4) probable cause to believe the person is committing or attempting to commit a misdemeanor in the officer's presence;
- (5) probable cause to believe the person has committed a:
 - (A) battery resulting in bodily injury under IC 35-42-2-1; or
 - (B) domestic battery under IC 35-42-2-1.3.

The officer may use an affidavit executed by an individual alleged to have direct knowledge of the incident alleging the elements of the offense of battery to establish probable cause;

- (6) probable cause to believe that the person violated IC 35-46-1-15.1 (invasion of privacy);
- (7) probable cause to believe that the person violated IC 35-47-2-1 (carrying a handgun without a license) or IC 35-47-2-22 (counterfeit handgun license); ~~or~~
- (8) probable cause to believe that the person is violating or has violated an order issued under IC 35-50-7; ~~or~~
- (9) probable cause to believe that the person is:**
 - (A) violating or has violated IC 35-45-2-5 (interference with the reporting of a crime); and**
 - (B) interfering with or preventing the reporting of a crime involving domestic or family violence (as defined in IC 34-6-2-34.5).**

(b) A person who:

- (1) is employed full time as a federal enforcement officer;
- (2) is empowered to effect an arrest with or without warrant for a violation of the United States Code; and
- (3) is authorized to carry firearms in the performance of the person's duties;

may act as an officer for the arrest of offenders against the laws of this state where the person reasonably believes that a felony has been or is about to be committed or attempted in the person's presence.

SECTION 18. IC 35-38-1-7.1, AS AMENDED BY P.L.133-2002, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7.1. (a) In determining what sentence to impose

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for a crime, the court shall consider:

- (1) the risk that the person will commit another crime;
- (2) the nature and circumstances of the crime committed;
- (3) the person's:
 - (A) prior criminal record;
 - (B) character; and
 - (C) condition;
- (4) whether the victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age;
- (5) whether the person committed the offense in the presence or within hearing of a person who is less than eighteen (18) years of age who was not the victim of the offense;
- (6) whether the person violated a protective order issued against the person under ~~IC 31-15~~, ~~IC 31-16~~, or IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or IC 34-4-5.1 before their repeal), a **workplace violence restraining order issued against the person under IC 34-26-6, or a no contact order issued against the person;** and
- (7) any oral or written statement made by a victim of the crime.

(b) The court may consider the following factors as aggravating circumstances or as favoring imposing consecutive terms of imprisonment:

- (1) The person has recently violated the conditions of any probation, parole, or pardon granted to the person.
- (2) The person has a history of criminal or delinquent activity.
- (3) The person is in need of correctional or rehabilitative treatment that can best be provided by commitment of the person to a penal facility.
- (4) Imposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the seriousness of the crime.
- (5) The victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age.
- (6) The victim of the crime was mentally or physically infirm.
- (7) The person committed a forcible felony while wearing a garment designed to resist the penetration of a bullet.
- (8) The person committed a sex crime listed in subsection (e) and:
 - (A) the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) and involved the sex organ of one (1) person and the mouth, anus, or sex organ of another person;
 - (B) the person had knowledge that the person was a carrier of



- 1 HIV; and
 2 (C) the person had received risk counseling as described in
 3 subsection (g).
 4 (9) The person committed an offense related to controlled
 5 substances listed in subsection (f) if:
 6 (A) the offense involved:
 7 (i) the delivery by any person to another person; or
 8 (ii) the use by any person on another person;
 9 of a contaminated sharp (as defined in IC 16-41-16-2) or other
 10 paraphernalia that creates an epidemiologically demonstrated
 11 risk of transmission of HIV by involving percutaneous contact;
 12 (B) the person had knowledge that the person was a carrier of
 13 the human immunodeficiency virus (HIV); and
 14 (C) the person had received risk counseling as described in
 15 subsection (g).
 16 (10) The person committed the offense in an area of a
 17 consolidated or second class city that is designated as a public
 18 safety improvement area by the Indiana criminal justice institute
 19 under IC 36-8-19.5.
 20 (11) The injury to or death of the victim of the crime was the
 21 result of shaken baby syndrome (as defined in IC 16-41-40-2).
 22 (12) Before the commission of the crime, the person administered
 23 to the victim of the crime, without the victim's knowledge, a
 24 sedating drug or a drug that had a hypnotic effect on the victim,
 25 or the person had knowledge that such a drug had been
 26 administered to the victim without the victim's knowledge.
 27 (13) The person:
 28 (A) committed trafficking with an inmate under IC 35-44-3-9;
 29 and
 30 (B) is an employee of the penal facility.
 31 (14) The person committed the offense in the presence or within
 32 hearing of a person who is less than eighteen (18) years of age
 33 who was not the victim of the offense.
 34 (c) The court may consider the following factors as mitigating
 35 circumstances or as favoring suspending the sentence and imposing
 36 probation:
 37 (1) The crime neither caused nor threatened serious harm to
 38 persons or property, or the person did not contemplate that it
 39 would do so.
 40 (2) The crime was the result of circumstances unlikely to recur.
 41 (3) The victim of the crime induced or facilitated the offense.
 42 (4) There are substantial grounds tending to excuse or justify the

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crime, though failing to establish a defense.

(5) The person acted under strong provocation.

(6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short term imprisonment.

(8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(d) The criteria listed in subsections (b) and (c) do not limit the matters that the court may consider in determining the sentence.

(e) For the purposes of this article, the following crimes are considered sex crimes:

(1) Rape (IC 35-42-4-1).

(2) Criminal deviate conduct (IC 35-42-4-2).

(3) Child molesting (IC 35-42-4-3).

(4) Child seduction (IC 35-42-4-7).

(5) Prostitution (IC 35-45-4-2).

(6) Patronizing a prostitute (IC 35-45-4-3).

(7) Incest (IC 35-46-1-3).

(8) Sexual misconduct with a minor under IC 35-42-4-9(a).

(f) For the purposes of this article, the following crimes are considered offenses related to controlled substances:

(1) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).

(2) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(4) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(5) Possession of cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-6).

(6) Possession of a controlled substance (IC 35-48-4-7).

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(7) Dealing in paraphernalia (IC 35-48-4-8.5).

(8) Possession of paraphernalia (IC 35-48-4-8.3).

(9) Offenses relating to registration (IC 35-48-4-14).

(g) For the purposes of this section, a person received risk counseling if the person had been:

(1) notified in person or in writing that tests have confirmed the presence of antibodies to the human immunodeficiency virus (HIV) in the person's blood; and

(2) warned of the behavior that can transmit HIV.

SECTION 19. IC 35-41-1-10.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 10.6. (a) An individual is a "family or household member" of another person if the individual:**

(1) is a current or former spouse of the other person;

(2) is dating or has dated the other person;

(3) is or was engaged in a sexual relationship with the other person;

(4) cohabits or previously cohabited with the other person;

(5) is related by blood or adoption to the other person;

(6) is or was related by marriage to the other person;

(7) has or previously had an established legal relationship:

(A) as a guardian of the other person;

(B) as a ward of the other person;

(C) as a custodian of the other person;

(D) as a foster parent of the other person; or

(E) in a capacity with respect to the other person similar to those listed in clauses (A) through (D); or

(8) has a child in common with the other person.

(b) An individual is a "family or household member" of both persons to whom subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) applies if the individual is a minor child of one (1) of the persons.

SECTION 20. IC 35-41-1-10.7, AS ADDED BY P.L.133-2002, SECTION 63, IS REPEALED [EFFECTIVE JULY 1, 2003].

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